

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 310 of 1997

and

COMPANY PETITION No 311 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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MEHTA INTEGRATED FINANCE LTD.

and

SANGATH INVESTMENT LTD.

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Appearance:

1. COMPANY PETITION No. 310 of 1997  
MR SN SOPARKAR for Petitioner  
MR BHARAT T RAO for Respondent No. 1
2. COMPANY PETITION No 311 of 1997  
MRS SWATI SOPARKAR for Petitioner  
MR BHARAT T RAO for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/10/98

ORAL JUDGEMENT

These petitions under Sections 391 and 394 of the Companies Act, 1956 are filed with a prayer to sanction the scheme for amalgamation of Sangath Investment Ltd. (hereinafter referred to as "the transferor Company") with Mehta Integrated Finance Ltd. (hereinafter referred to as "the transferee Company").

2. The petitioners have pointed out in the petitions that both the companies belong to the same management group. The Board of directors of both the companies thought it fit to amalgamate them for achieving synergy as the line of activities is similar and the amalgamated company shall have higher liquidity so as to meet with the liquidity problems of the transferor Company and that as the transferee company has a broader base of operations and good image amongst the clients, the amalgamated company can have better growth prospects.

3. By order dated 30.6.1997 read with order dated 9.7.1997, this Court ordered that the meeting of the equity shareholders of the transferee Company shall be convened on 6.8.1997 for the purpose of considering and if thought fit, approving, with or without modifications, the compromise or arrangement in the nature of amalgamation.

As far as the transferor Company is concerned, by order dated 8.7.1998, the meeting of the shareholders and the creditors of the transferor Company were dispensed with in view of the consent of the shareholders as well as the unsecured creditors of the transferor Company. The transferor Company has no secured creditors as recorded in the said order dated 8.7.1997.

4. Notices of admission of these petitions have been published in two daily newspapers viz. Indian Express, Baroda edition dated 22.9.1997 and Ahmedabad edition dated 22.9.1997 and in Loksatta, Baroda, Ahmedabad and Rajkot editions dated 22.9.1997.

Inspite of the aforesaid public advertisements, no one has appeared to oppose these petitions.

5. The notice of the petitions was also served on the Official Liquidator who has filed his report dated 17-4-1998 and has reported that the affairs of the transferor Company have not been conducted in a manner prejudicial to public interest or the interests of the members.

6. As far as the Central Government is concerned,

the notice was served on the Regional Director (Western Region) of the Company Law Affairs and on their behalf Mr BT Rao had prayed for adjournment on 20.2.1998, 11.3.1998, 1.4.1998, 6.5.1998 and 2.9.1998. Even though so many opportunities were granted, none was availed of and, therefore, this Court had passed the order dated 25.9.1998 fixing peremptory hearing of the petition on 29.9.1998. Ultimately, at the request of Mr. Rao, the hearing was adjourned till today. Though no affidavit in reply is filed, Mr Rao has produced a photostat copy of the letter dated 16.12.1997 from the Registrar of Companies to the then learned Senior Standing Counsel for the Central Government conveying certain objections.

7. The first objection is that the share exchange ratio of 8 shares of the transferor Company as against 1 share of the transferee Company although the worth of the transferor Company as on 31.3.1994 was in the negative.

The reply of the Company to the said objection is that the share exchange ratio is fixed on the basis of report of M/s Dinesh K. Shah & Co., Chartered Accountants and has been approved unanimously by all the share holders of the Company.

8. In view of the decision of the Apex Court in Mihir H. Mafatlal vs. Mafatlal Industries, AIR 1997 SC 506, when the share exchange ratio is approved by a substantial majority of the shareholders, the Court is not to sit in appeal over the wisdom of the shareholders on the question of share exchange ratio. The role of the Court is confined to ensuring that the game is properly played. It is left to the players how best the game is to be played.

9. The second objection is that though the Directors Report dated 8.11.1996 did not recommend any dividend for the year ended 31.3.1996, the profit and loss account for the year showed payment of dividend to the tune of Rs.1,63,90,218/- and that the said dividend was paid without there being any profit.

In the affidavit in reply dated 7.10.1998 filed in response to the above letter, it is pointed out that the financial year of Mehta Integrated Finance Limited is ending on 31st August every year. For the accounting years 1993-94 and 1994-95 there was adequate profit and dividend was declared. Copies of the said accounts are produced at Annexure "A" colly. to the said affidavit. It is further pointed out that these accounts were filed with the Registrar of Companies with the annual report

whereas the accounts attached to the memo of the petition are prepared for income tax purpose only on April to March basis.

Mr Rao for the Central Government has conceded that the objection would not survive in view of the above affidavit and the copies of the report filed alongwith the affidavit dated 17.9.1998 wherein it is clearly mentioned in the Directors' Report dated 15.11.1994 as under :-

"DIVIDENDS

Your Directors are pleased to recommend a  
Dividend @ 21% p.a. on prorata basis  
(subject to deduction of tax) amounting  
to Rs.88.21 lacs on enhanced Equity Share  
Capital of the Company for the year ended  
on 31st August 1994."

In the Annual Report dated 7.11.1995 also it is  
stated as under :

"2. DIVIDENDS

Your Directors are pleased to recommend a  
Dividend @ 15% p.a. (subject to  
deduction of income tax) amounting to  
Rs.75 lacs for the year ended on 31st  
August 1995."

10. In view of the fact that by passing an order of amalgamation the Court does not absolve the transferee Company from the liabilities if any, for any breach of the provisions of the Income Tax Act and in view of the above concession made by Mr Rao, the Court does not propose to go into the objections raised by the Regional Director on merits.

11. In view of the fact that the equity shareholders of both the transferor Company as well as the transferee Company have unanimously approved the scheme of amalgamation and all the creditors of the transferor Company have also approved the scheme of amalgamation and in view of the report of the Official Liquidator that the affairs of the transferor Company have not been carried out in a manner prejudicial to the interest of the members or to the public interest, and in view of absence of any opposition to the scheme even after advertisements have been published in daily newspapers as aforesaid, the scheme of amalgamation deserves to be sanctioned.

12. In view of the above discussion, the scheme of amalgamation of Sangath Investment Ltd. (transferor Company) with Mehta Integrated Finance Ltd. (transferee Company) as per the scheme at Annexure "C" in both the petitions is sanctioned with effect from 1.4.1994 so as to be binding on all the equity shareholders of both the companies and also on all the secured and unsecured creditors of both the companies.

It is accordingly ordered that the entire undertakings and all the properties, rights and powers of the transferor Company be transferred to and vest in the transferee Company pursuant to Section 394(2) of the Act subject to all charges affecting the same and that all the debts, liabilities, dues and obligations of the transferor Company be transferred to and become the debts, liabilities, dues and obligations of the transferee Company with effect from 1.4.1994. All the proceedings pending by or against the transferor Company shall be continued by or against the transferee Company.

The present order of amalgamation shall not absolve the transferor Company or its Directors or employees from the liabilities, if any, for breach of any law which might have been committed before this order of amalgamation nor shall this order absolve the transferee Company from the liability to pay stamp duty in accordance with law.

13. A certified copy of this order shall be delivered to the Registrar of Companies within 30 days from the date of this order by the transferor Company and on such copy being so delivered, the transferor Company shall stand dissolved and the Registrar of Companies shall place all documents relating to the transferor Company and registered with him on the file kept by him in relation to the transferee Company and the files relating to the transferor Company shall be consolidated accordingly.

14. Liberty to any person interested to apply for directions in the matter, if necessary.

15. Both the petitions are accordingly allowed in the aforesaid terms. The fees for the learned Additional Standing Counsel for the Central Government, quantified at Rs.2,500/- (Rupees Two thousand five hundred only) for each petition i.e. Rs.5,000/- in the aggregate, shall be paid by the transferee Company within one month from today.

Sd/-

(M.S. Shah, J.)